

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

GALVESTON DIVISION

BINGZI ZHENG	§	
	§	
VS.	§	CIVIL ACTION NO. G-07-026
	§	
MICHAEL CHERTOFF, as Secretary of the	§	
Department of Homeland Security,	§	
EMILIO T. GONZALEZ, Director of U.S.	§	
Citizen and Immigration Services (USCIS),	§	
and ROBERT S. MUELLER, Director of	§	
Federal Bureau of Investigation	§	

OPINION AND ORDER

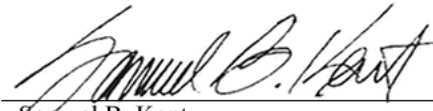
Before the Court is a Report and Recommendation from the United States Magistrate Judge which recommends that the “Defendants’ Motion to Dismiss” the pro se complaint of Plaintiff, Bingzi Zheng, be denied. The Defendants have filed timely objections to the Report and Recommendation.

After *de novo* review pursuant to 28 U.S.C. § 636(b)(1)(C), it is clear that the Magistrate Judge simply found that the Court has subject matter jurisdiction to determine the issue of whether the Defendants have violated the Administrative Procedure Act by unreasonably delaying the adjudication of Zheng’s Form I-485 Application to adjust her immigration status and presently had insufficient evidence in the record to resolve that issue on a Rule 12(b) Motion to Dismiss. This Court agrees with the Magistrate Judge. The Defendants may not violate the Administrative Procedure Act and escape judicial scrutiny. Kim v. Ashcroft, 340 F.Supp. 2d 384, 388 (S.D. N.Y. 2004) The determination of whether the delay in this particular case is reasonable “in light of heightened security concerns and the post-911 world” is best resolved by summary

judgment. Accordingly, the Report and Recommendation of the Magistrate Judge is **ACCEPTED** by this Court in its entirety and incorporated by reference herein.

It is, therefore, the **ORDER** of this Court that the “Defendants’ Motion to Dismiss” (Instrument no. 11) filed pursuant to Rule 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure is **DENIED**.

DONE at Galveston, Texas, this 9th day of July, 2007.



Samuel B. Kent
United States District Judge